

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LUCIA RAMOS-QUIRARTE,
 Plaintiff(s),
 v.
 STATE OF NEVADA, et al.,
 Defendant(s).

Case No. 2:23-cv-01778-RFB-NJK

Order

[Docket No. 6]

Pending before the Court is Defendants' motion to stay discovery pending resolution of their motion to dismiss. Docket No. 6. Plaintiff filed a response in opposition. Docket No. 10. Defendants filed a reply. Docket No. 15. The motion is properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the motion to stay discovery is **DENIED**.¹

The Court has broad discretionary power to control discovery. *See, e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). "The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). The party seeking a stay of discovery bears the heavy burden of making a strong showing that discovery should be denied. *Turner Broad. Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). Discovery may be stayed when: (1) there is a pending motion that is potentially dispositive in scope and effect; (2) the potentially dispositive motion can be decided without additional discovery; and (3) the Court has taken a "preliminary peek" at the merits of the underlying motion and is convinced that Plaintiff will be unable to state a claim for relief. *Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).

¹ The Court has been obliged on occasion to express its disapproval when attorneys have not engaged with each other with the civility and professionalism required. *See, e.g.,* Local Rule 1-1(c). In this case, the Court notes the remarkable courtesy that counsel displayed during the conferral process, *see* Docket No. 6-1, **for which they must be commended**.

1 A stay of discovery is not warranted. Most significantly, the Court has taken a preliminary
 2 peek at the motion to dismiss and is not convinced that it will be granted. It bears repeating that
 3 the filing of a non-frivolous dispositive motion, standing alone, is not enough to warrant staying
 4 discovery. *See, e.g., Tradebay*, 278 F.R.D. at 603. Instead, the Court must be “convinced” that
 5 the dispositive motion will be granted. *See, e.g., id.* “That standard is not easily met.” *Kor Media*,
 6 294 F.R.D. at 583. “[T]here must be *no question* in the court’s mind that the dispositive motion
 7 will prevail, and therefore, discovery is a waste of effort.” *Id.* (quoting *Trazska v. Int’l Game*
 8 *Tech.*, 2011 WL 1233298, *3 (D. Nev. Mar. 29, 2011)) (emphasis in original). The Court requires
 9 this robust showing because applying a lower standard would likely result in unnecessary delay in
 10 many cases. *Id.* (quoting *Trazska*, 2011 WL 1233298, at *4).

11 With respect to the Nevada constitutional claim, the Court is not convinced by Defendants’
 12 arguments that, *inter alia*, there is no private right of action, *cf. Meeks v. Nev. Dep’t of Corr.*, 2020
 13 WL 8084979, at *19 (D. Nev. Nov. 10, 2020) (finding private right of action under Article 1,
 14 Section 6 of the Nevada Constitution), *adopted*, 2021 WL 53619 (D. Nev. Jan. 6, 2021), that the
 15 statute of limitation is properly resolved on the pleadings, *see, e.g., Winn v. Sunrise Hosp. & Med.*
 16 *Ctr.*, 277 P.3d 458, 466 (Nev. 2012) (noting factual nature of inquiry); *see also Espinosa v.*
 17 *CoreCivic*, 2020 WL 11036017, at *2-3 (D. Nev. Oct. 15, 2020) (Boulware, J.) (denying motion
 18 to dismiss), or that the allegations fail to state a claim at the pleading stage, *see Le v. Zuffa, LLC*,
 19 216 F. Supp. 3d 1154, 1164 (D. Nev. 2016) (Boulware, J.) (in deciding motion to dismiss, well-
 20 pleaded factual allegations are accepted as true and construed in the light most favorable to the
 21 plaintiff).² Moreover, although the Court is mindful that Defendants also raise qualified immunity,
 22 it does not apply to the state constitutional claim, *Mack v. Williams*, 522 P.3d 434, 451 (Nev.
 23 2022), and the potential application of an immunity to a portion of the case is not grounds to stay
 24

25 ² Conducting the preliminary peek puts the undersigned in an awkward position because
 26 the assigned district judge will decide the motion to dismiss may have a different view of its merits.
 27 *See Tradebay*, 278 F.R.D. at 603. The undersigned’s “preliminary peek” at the merits of that
 28 motion is not intended to prejudice its outcome. *See id.* As a result, the undersigned will not
 provide a lengthy discussion of the merits of the pending motion to dismiss in this instance.
 Nonetheless, the undersigned has carefully reviewed the arguments presented in the underlying
 motion and subsequent briefing.

1 all discovery, since it will not impact the need for the discovery on the unaffected claims, *see, e.g.*,
2 *Martinez v. Las Vegas Metro. Police Dep't*, No. 2:20-cv-00618-JCM-NJK, 2020 WL 3166611, at
3 *1 n.2 (D. Nev. June 9, 2020). In short, the Court is not convinced that Plaintiff will be unable to
4 state a claim, so a stay of discovery is not warranted. *E.g., Tradebay*, 278 F.R.D. at 603 (“A stay
5 of all discovery should only be ordered if the court is ‘convinced’ that a plaintiff will be unable to
6 state a claim for relief”).

7 Accordingly, the motion to stay discovery is **DENIED**. The parties must file a proposed
8 discovery plan by January 17, 2024.

9 IT IS SO ORDERED.

10 Dated: January 4, 2024

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13 Nancy J. Koppe
14 United States Magistrate Judge
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